



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Office of Inspector General**  
Washington, DC 20230

September 5, 2019

VIA E-MAIL

Emma Best  
MuckRock News  
DEPT MR 74285  
411A Highland Ave.  
Somerville, MA 02144-2516

RE: FOIA Appeal No. DOC-OIG-2019-001994 of FOIA Request No. DOC-OIG-2019-001466

Dear Ms. Best:

This responds to your Freedom of Information Act (FOIA) appeal dated August 2, 2019,<sup>1</sup> in which you sought review of the Office of Inspector General's (OIG's) administrative closure of your FOIA request dated June 5, 2019 (DOC-OIG-2019-001466). Your June 5, 2019 FOIA request sought copies of records "mentioning or describing audits, reviews, investigations or reports regarding the agency's cyber security, including audits or investigations regarding the state of the agency's cyber security regarding potential attacks as well as audits and investigations conducted in the wake of a suspected or actual cyber attack, hacking incident or breach. Please include materials generated between 1 January 1996 and 30 June 2016."

According to the OIG's records, on June 5, 2019, the same day that the OIG received your FOIA request, the OIG sent you an email acknowledging receipt of your request and informing you that your request was overbroad. The email further explained that there is a legal requirement that FOIA requests must identify the records being sought with sufficient specificity,<sup>2</sup> and that your June 5, 2019 request did not. The email invited you to narrow or modify the scope of your request, and the OIG volunteered to assist you in this process. Finally, the email notified you that if you did not comply with the OIG's instructions to identify the records with sufficient specificity by July 5, 2019, then no further action would be taken on the FOIA request and it would be administratively closed.

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<sup>1</sup> The OIG received this appeal on August 15, 2019.

<sup>2</sup> See 15 C.F.R. §4.4(c)

After the OIG did not receive a response you, the OIG sent you a formal letter, via email, on July 5, 2019, notifying you that your request was being administratively closed. The OIG closed your request because you had failed to respond to the OIG's request for clarification and the letter further stated that the OIG would be unable to continue processing this request. The formal letter also explained that if you continue to seek OIG records, you may file a new request.

In your August 2, 2019 FOIA appeal, you challenged the OIG's administrative closure of your June 5, 2019 FOIA request. Your appeal states:

"I am appealing the decision to close the FOIA, as the request for further information was recalled, see <https://www.muckrock.com/foi/united-states-of-america-10/inspector-general-infosec-audits-etc-1996-20165-department-of-commerce-office-of-inspector-general-74891/#comm-734777>. Closing the FOIA for a failure to comply with a withdrawn request for clarification is highly inappropriate."

From the OIG's reading, the sole basis under which this appeal is challenging the OIG's administrative closure of the June 5, 2019 FOIA request is your contention that the request for clarification was "recalled."

### **Possibly Recalled Email**

The facts as described above reflect the OIG's record and the OIG's knowledge of the communications pertaining to this FOIA request. The OIG FOIA email account has no record in its Sent Mail box of sending a recall notice to the email address associated with the June 5, 2019 FOIA request.<sup>3</sup> Moreover, the OIG Government Information Specialist responsible for handling these communications has no recollection of issuing a recall notice. Therefore, the OIG had no reason to believe that it issued a recall notice for the June 5, 2019 email requesting clarification. Based on the OIG's record and knowledge of communications, the July 5, 2019 administrative closure was appropriate.

Your FOIA appeal appears to rely upon a different set of facts. There is no statement in your August 2, 2019 appeal explaining the assertion that the OIG's request for clarification was withdrawn. Although your appeal cites to a webpage address maintained by the appellant, it provides no explanation of what that webpage is or how its information is generated or maintained. Upon visiting that webpage, it appears to the OIG that the webpage purports to be a collection of the text of the communications pertaining to the June 5, 2019 FOIA. The webpage does not appear to maintain the original communications, nor does it have many details about the communications such as timestamps or other metadata. A copy of the webpage as viewed by the OIG is attached. The communications appear to be in descending chronological order, with the

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<sup>3</sup> The OIG also has no record of sending its request for clarification email twice.

email initiating the FOIA request at the top and the email acknowledging receipt of FOIA appeal at the bottom. However, without additional information and support concerning the accuracy and validity of the information the website, the OIG cannot assume that it is correct.

Even if the OIG were to assume that the webpage's content is accurate, based on its contents, it would be unreasonable to assume that the OIG withdrew its request for clarification. The first communication from the OIG appearing on that webpage was a recall notice that simply stated, "OIG FOIA would like to recall the message, 'FOIA DOC-OIG-2019-001466 - Action Required.'" This language appears to be the language automatically generated by Microsoft Outlook when attempting to recall an email and does not in any way discuss the substance of the FOIA request or the OIG's request for clarification. The most reasonable interpretation of this email is that the OIG recalled a message that it had inadvertently previously sent, which is why it does not appear on the webpage. Proceeding down the webpage, the next two messages the OIG sent appear to have been exact duplicates of each other and both contained the OIG's acknowledgment of receipt of the FOIA request as well as the OIG's request for clarification. Moreover, both explicitly stated, "[i]f you fail to provide sufficient detail by July 5, 2019, we will notify you in writing that your request has not been properly made, that no further action will be taken, and that your request is closed." If one were to ignore that the recall message came first, it would be reasonable for a person to receive those three messages, believe that the duplicate acknowledgment and request for clarification was sent in error, and conclude that the recall email was intended to recall only the duplicate. It would not be reasonable for someone to believe that a message to recall an email sent in error was intended to withdraw and negate multiple emails that followed it. As there were two messages mandating clarification of the FOIA request and only one recall message, according to the webpage cited in the appeal, you would have received sufficient information to put you on notice that you needed to communicate with the OIG FOIA contact prior to July 5, 2019. As you did not, the OIG's administrative closure of your request would have been appropriate even under these circumstances.

Whether viewed from the perspective of the records maintained by the OIG or those maintained on the muckrock.com website, the chain of communications between the OIG and the requester would lead a reasonable person to believe that OIG required clarification to proceed with processing the FOIA request and that the request would be closed if no such clarification was provided by July 5, 2019. Thus, the assertion in the August 2, 2019 FOIA appeal that the OIG's request for clarification was withdrawn is unreasonable and not supported by the facts provided. Accordingly, the administrative closure of the FOIA request was proper.

## **Requirements of a FOIA Request**

For your information,<sup>4</sup> FOIA requests must

“reasonably describe the agency records sought, to enable Department personnel to locate them with a reasonable amount of effort . . . . Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, case number, file designation, or reference number, and the name and location of the office where the record might be found.”

15 C.F.R. §4.4(c). Moreover, as a corollary to the “reasonably describe[d]” inquiry requirement cited above, courts have held that agencies are not required to conduct wide-ranging, “unreasonably burdensome” searches for records. *See, e.g., Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 892 (D.C. Cir. 1995) (agreeing that search requiring review of twenty-three years of unindexed files would be unreasonably burdensome); *AFGE v. U.S. Dep’t of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990) (holding that “while [plaintiff’s requests] might identify the documents requested with sufficient precision to enable the agency to identify them . . . it is clear that these requests are so broad as to impose an unreasonable burden upon the agency,” because agency would have “to locate, review, redact, and arrange for [the] inspection [of] a vast quantity of material”). Should you opt to file a new request for OIG records, please keep these principles in mind.

## **Conclusion**

Your appeal is denied. FOIA Request DOC-OIG-2019-001466 will remain administratively closed due to your failure to contact the OIG within the allotted period to clarify your request. This is the final decision of the OIG.

You have the right to seek judicial review of this partial denial, as provided in 5 U.S.C. § 552(a)(4)(B). Further, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

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<sup>4</sup> The relevant legal standards were not discussed in the August 2, 2019 FOIA appeal, and this information is being provided solely for your benefit.

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road – OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov/>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Nothing in this decision affects or forecloses your ability to file a new FOIA request seeking documents from the OIG.

Sincerely,

Wade Green, Jr.  
Counsel to the Inspector General

Enclosure



[Sign Up](#)[Log In](#)**From: Emma Best**

06/05/2019

**Subject: Freedom of Information Act Request: Inspector General infosec audits etc. 1996-2016.5 (Department of Co...** [Email](#)

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

Copies of records mentioning or describing audits, reviews, investigations or reports regarding the agency's cyber security, including audits or investigations regarding the state of the agency's cyber security regarding potential attacks as well as audits and investigations conducted in the wake of a suspected or actual cyber attack, hacking incident or breach. Please include materials generated between 1 January 1996 and 30 June 2016.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Emma Best



Fee20category20and20search20parameters.pdf

[View](#) [Embed](#) [Download](#)**From: Department of Commerce, Office of Inspector General**

06/05/2019

**Subject: Recall: FOIA DOC-OIG-2019-001466 - Action Required**[Email](#)

OIG FOIA would like to recall the message, "FOIA DOC-OIG-2019-001466 - Action Required".

**From: Department of Commerce, Office of Inspector General**

06/05/2019

**Subject: FOIA DOC-OIG-2019-001466 - Action Required**[Email](#)

Emma Best

411A Highland Ave.

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Re: FOIA DOC-OIG-2019-001466

Dear Ms. Best:

This email is to acknowledge receipt of your Freedom of Information Act (FOIA) request, received by the Department of Commerce, Office of Inspector General (OIG) on June 5, 2019, in which you seek copies of "records mentioning or describing audits, reviews, investigations or reports regarding the agency's cyber security, including audits or investigations regarding the state of the agency's cyber security regarding potential attacks as well as audits and investigations conducted in the wake of a suspected or actual cyber attack, hacking incident or breach. Please include materials generated between 1 January 1996 and 30 June 2016." The tracking number for your request is DOC-OIG-2019-001466. Please refer to this number in all correspondence regarding your request.

We ask that you narrow your request to a more specific time period and/or division or office of the Office of the Inspector General as we find that in its current status it is very broad. Pursuant to Department of Commerce FOIA regulations at 15 C.F.R. § 4.4(c), a "FOIA request must reasonably describe the agency records sought, to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record might be found." Your request does not reasonably describe the records sought; I am available to discuss your request if you would like to reformulate or modify your request. If you fail to provide sufficient detail by July 5, 2019, we will notify you in writing that your request has not been properly made, that no further action will be taken, and that your request is closed.

If you have any questions regarding your request, please contact me or Laura Main, Government Information Specialist, by phone at (202) 482-5992 or via e-mail at [FOIA@oig.doc.gov](mailto:FOIA@oig.doc.gov).

U.S. Department of Commerce  
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Tel: (202) 482-5992  
[FOIA@oig.doc.gov](mailto:FOIA@oig.doc.gov)<<mailto:FOIA@oig.doc.gov>>



~WRD000

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Emma Best  
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Somerville, MA 02144

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[FOIA@oig.doc.gov](mailto:FOIA@oig.doc.gov)<<mailto:FOIA@oig.doc.gov>>

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**From:** Department of Commerce, Office of Inspector General

07/05/2019

**Subject:** RE: Freedom of Information Act Request: Inspector General infosec audits etc. 1996-2016.5 (Department o... [Email](#)

Please see the attached response to your FOIA request.

U.S. Department of Commerce  
Office of Inspector General  
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Tel: (202) 482-5992

[FOIA@oig.doc.gov](mailto:FOIA@oig.doc.gov)<<mailto:FOIA@oig.doc.gov>>



2019-001466\_Administrative Close Out Letter\_Failure to Clarify Letter PDF

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~WRD000

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**From:** Emma Best

08/02/2019

**Subject:** RE: Freedom of Information Act Request #DOC-OIG-2019-001466

[Mail](#)

I am appealing the decision to close the FOIA, as the request for further information was recalled, see <https://www.muckrock.com/foi/united-states-of-america-10/inspector-general-infosec-audits-etc-1996-20165-department-of-commerce-office-of-inspector-general-74891/#comm-734777>. Closing the FOIA for a failure to comply with a withdrawn request for clarification is highly inappropriate.



2019-001466\_Administrative Close Out Letter\_Failure to Clarify Letter PDF

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**From:** Department of Commerce, Office of Inspector General



08/16/2019



**Subject:** FOIA Appeal No. DOC-OIG-2019-001994 of FOIA Request No. DOC-OIG-2019-001466

[Email](#)

Please see the attached acknowledgement of you FOIA Appeal DOC-OIG-2019-001994.

U.S. Department of Commerce






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2019-001994 Acknowledgement Letter SIGNED


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